Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 138

ADAM CLAYTON POWELL, JR., *et al.*,
Plaintiffs-Petitioners,

—against—

JOHN W. McCORMACK, *et al.*,
Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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To the Justices of the Supreme Court of the United States:

Petitioners respectfully pray that a writ of certiorari issue to review the order and judgment of the United States District Court for the District of Columbia denying petitioners' application for the certification of the necessity of a statutory three-judge court, dismissing petitioners' complaint for want of jurisdiction of the subject matter, and denying petitioners' motion for a preliminary injunction, which order and judgment were affirmed by the United States Court of Appeals for the District of Columbia Circuit on February 28, 1968.

Opinions Below

The District Court, Hart, U.S.D.J., denying an application for certification of the necessity of a statutory three-judge court, dismissed the complaint for want of jurisdiction of the subject matter and denied a motion for preliminary injunction. Its opinion, which is reported at 266 F. Supp. 354, appears as Appendix A. The opinion-decision of the Court of Appeals, as yet unreported, appears as Appendix B, which is appended hereto.

Jurisdiction

The order and judgment of the District Court was entered on April 7, 1967. The opinion-decision of the Court of Appeals was issued and entered on February 28, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

Statute Involved

HOUSE RESOLUTION 278
IN THE HOUSE OF REPRESENTATIVES
approved March 1, 1967.

RESOLUTION

WHEREAS,

The Select Committee appointed Pursuant to H. Res. 1 (90th Congress) has reached the following conclusions;

First, Adam Clayton Powell possesses the requisite qualifications of age, citizenship and inhabitancy for membership in the House of Representatives and holds a Certificate of Election from the State of New York.

Second, Adam Clayton Powell has repeatedly ignored the processes and authority of the courts in the State of New York in legal proceedings pending therein to which he is a party, and his contumacious conduct towards the court of that State has caused him on several occasions to be adjudicated in contempt thereof, thereby reflecting discredit upon and bringing into disrepute the House of Representatives and its Members.

Third, as a Member of this House, Adam Clayton Powell improperly maintained on his clerk-hire payroll Y. Marjorie Flores (Mrs. Adam C. Powell) from August 14, 1964 to December 31, 1966, during which period either she performed no official duties whatever or such duties were not performed in Washington, D. C. or the State of New York as required by law.

Fourth, as Chairman of the Committee on Education and Labor, Adam Clayton Powell permitted and participated in improper expenditures of government funds for private purposes.

Fifth, the refusal of Adam Clayton Powell to cooperate with the Select Committee and the Special Subcommittee on Contracts of the House Administration Committee in their lawful inquiries authorized by the House of Representatives was contemptuous and was conduct unworthy of a Member; Now, therefore, be it

Resolved, That said Adam Clayton Powell, Member-Elect from the Eighteenth District of the State of New York, be and the same hereby is excluded from membership in the 90th Congress, and that the Speaker shall notify the Governor of the State of New York of the existing vacancy.

Questions Presented

1. Whether the refusal of the House of Representatives to seat a duly elected Representative of the people, who meets all the constitutional qualifications for membership in the House, and further to bar him from membership for the entire 90th Session violates the Constitution of the United States, and in particular Article One, Clause Two, and Article One, Clause Five, thereof.

2. Whether the refusal of the House of Representatives to seat a duly elected Representative of the people, who meets all the constitutional qualifications for membership in the House violates the fundamental and inalienable rights of the class of Petitioners, citizens of the 18th Congressional District of New York to the free choice of their own representatives to the Legislature essential to a system of representative democracy?

3. Whether the legislative punishment inflicted upon the Petitioner by the enactment of House Resolution 278 violated the Constitutional prohibition against Bills of Attainder?

4. Whether the punishment by exclusion of the Petitioner from membership in the House violated the Due Process guarantee of the Fifth Amendment to the Constitution of the United States.

5. Whether the exclusion of the Petitioner violated his rights and the rights of the class of Petitioners representing the overwhelming Negro majority of the citizens of the 18th Congressional District of New York guaranteed to them by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States?

6. Whether the dismissal of the complaint for "want of jurisdiction over the subject matter" was erroneous and in violation of Article III of the Constitution of the United States?

7. Whether the questions presented in the complaint are justiciable and subject to review by the national courts?

8. Whether the courts have power to grant the relief required to remedy the violations of Petitioners' rights?

9. Whether the District Court erred in refusing to certify the necessity for a three-judge statutory district court and, if so, whether this Court should order the convening of such a court and instruct such court to grant forthwith the relief prayed for herein?

Statement of the Case

The bedrock constitutional questions raised in this Petition, arise out of the extraordinary, arbitrary, and unconstitutional action of the majority of the House of Representatives on March 1, 1967, in excluding Adam Clayton Powell, Jr., the duly elected Member-elect from the 18th Congressional District of New York, possessing all requisite constitutional qualifications for membership in that body, and, further permanently barring him from membership in the entire 90th Session of the House. Because many of the relevant facts relating thereto have been of necessity incorporated in the legal arguments hereinafter set forth, Petitioners will here confine themselves to a recital of the basic uncontested facts leading up to the House's extraordinary unconstitutional action which has resulted in a crisis decisive to the future of representative democracy in this country.

Statement of Facts

1. The facts preceding the institution of the present action

Petitioner Adam Clayton Powell, Jr., the duly nominated Democratic candidate for the House of Representatives for the 18th Congressional District of New York, received the greatest number of votes cast for that office at the general election of November 8, 1966. The official tabulation of said votes, as certified by the Secretary of State of the State of New York, was as follows:

Lassen L. Walsh (Rep)	10,711
Adam C. Powell (Dem)	45,308
Richard Prideaux (Lib)	3,954
Rylan E. D. Chase (Con)	1,214

Based upon said tabulation, a certificate of election was issued by the Secretary of State on December 15, 1966, and duly forwarded to and received by the Clerk of the House of Representatives.

The 90th Congress opened on January 10, 1967, after respondent McCormack had been elected as the Speaker of the House of Representatives and duly sworn pursuant to the provisions of Title 2, U.S. Code, Section 25. He informed the House that he would, pursuant to the said Section 25, administer the oath to the Members-elect thereof. Prior to said administration, however, Representative Van Deerlin, of California, asked that Congressman Powell stand aside during the administration of said oath, which request, because of its status as a point of the highest personal privilege, was granted by the Speaker. After the other Members-elect had been sworn, a resolution, herein-

after referred to as House Resolution 1, was introduced and passed. House Resolution 1 reads in pertinent part, as follows:

> *Resolved,* That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House.

Subsequently, and on January 19, 1967, the Speaker, pursuant to the provisions of the aforesaid resolution, appointed five Democrats and four Republicans, all lawyers, to serve as members of said select committee under the chairmanship of the Honorable Emanuel Celler, the Chairman of the House Judiciary Committee. On February 1, 1967, Mr. Celler, at the direction of the Select Committee, invited Member-Elect Powell to appear before it "to give testimony and to respond to interrogation" concerning his age, citizenship and inhabitancy and certain other matters.

The attorneys for Petitioner Powell filed several motions and supporting memoranda before, during, and after hearings held by the Select Committee on February 8, 14 and 16, 1967, all raising the issue of the denial to him of both substantive and procedural due process by the Committee's proceeding to consider the matter of seating or expelling him without the minimum due process requirements of an adversary hearing.

These motions and memoranda objected to: 1) the absence of any guides or standard by which alleged misconduct would be measured; 2) the absence of any charges and specification of violation of ascertainable proscribed conduct; 3) the absence of any of the procedural safeguards of an adversary hearing—such as a statement of charges, the right of confrontation, the right of cross-examination and the right of counsel in an adversary proceeding.

The total effect of these deprivations of due process was to deny to the individual and class plaintiffs-petitioners fundamentally protected constitutional rights without any of the traditional safeguards of an adversary proceeding, although the resulting recommendations included, for example, one that "Adam Clayton Powell, *as punishment*, pay the Clerk of the House, to be disposed of by him according to law, $40,000." (Emphasis added.)

Petitioner Powell, accompanied by counsel, appeared before the Select Committee on February 8, 1967, and, after certain preliminaries which were made part of the record, the Committee received a brief and heard argument by counsel for him on the principal substantive motion submitted; received, but refused to entertain argument on his procedural motions, and took all of the motions—which the Chairman initially characterized as "dilatory" [1]—under advisement. The Chairman, over the protest of Petitioner Powell's counsel as well as one member of the Committee, then insisted that he, Powell, take the oath and be interrogated by counsel for the Committee. The interrogation began and was interrupted shortly thereafter by the ob-

[1] He later withdrew this categorization.

jection of Petitioner Powell's attorneys and their insistence that he would not proceed further without a ruling upon his pending motions. Thereupon, the Committee recessed and, upon reconvening, the Chairman denied all of the motions.

Petitioner Powell, under protest, thereupon proceeded to be interrogated by counsel for the Committee but limited his testimony, upon the advice of counsel, to the constitutionally prescribed qualifications of age, citizenship and inhabitancy. Counsel for Petitioner Powell then submitted and the Committee received documentary evidence as to those issues. The Chairman thereupon refused to permit Mr. Powell, as previously promised, to make a statement at that time.

Petitioner Powell, under the circumstances, did not again appear personally before the Committee. However, the Committee, under date of February 10, 1967, informed him that it would appreciate receiving certain information from him or his counsel, as follows:

> "One: With reference to the seating phase of our inquiry, do you refuse to give any testimony concerning (a) status of legal proceedings to which you are a party in the State of New York and in the Commonwealth of Puerto Rico with particular reference to the instances in which you have been held in contempt of court, and (b) alleged official misconduct on your part occurring at any time since January 3, 1961?
>
> Two: With reference to the second phase of our inquiry, relating to the power of the House to punish or expel pursuant to Article I, Section 5, Clause 2 of the Constitution, do you refuse to give any testimony concerning (a) status of legal proceedings in which you are a party of the State of New York and in the

> Commonwealth of Puerto Rico, with particular reference to the instances in which you have been held in contempt of court, and (b) alleged official misconduct on your part occurring at any time since January 3, 1961?"

On February 14, 1967, counsel for Mr. Powell appeared before the Committee and responded fully to its request for information, and indicated as follows:

> "The short of our position is that H.R. No. 1 authorizes inquiry solely and exclusively into Congressman Powell's qualifications for membership in the House. If we are in error in that regard, then we take the flat position that the House could not, pursuant to H.R. No. 1, or indeed pursuant to any resolution, authorize any Committee to make the kind of simultaneous inquiry which this Committee proposes to undertake. Before the power to punish a 'member', pursuant to Article I, Section 5, Clause 2 of the Constitution can be invoked, the determination of membership must have been concluded on the basis of qualifications for membership as set forth in Article I, Section 2, Clause 2 of the Constitution."

Thereafter, the Committee held further hearings and received evidence, culminating in its Report, in which, while finding that

> "Member-Elect Adam Clayton Powell meets the qualifications of age, citizenship, and inhabitancy and holds a certificate of election from the State of New York,"

it concluded that certain conduct of Mr. Powell "has reflected adversely on the integrity and reputation of the House and its Members." Among other things, it recommended that Mr. Powell be seated, be "censured and con-

demned", pay $40,000 to the Clerk of the House by $1,000-a-month deductions from his salary, and lose his seniority.

On March 1, 1967, the House of Representatives, upon presentation to it of the said Committee Report, including the recommended resolution, rejected the resolution as proposed by the Committee and instead adopted House Resolution 278.[2]

2. The initiation of the complaint

The present action, which was brought by Congressman Powell and thirteen of his constituents, as class representative of the electors of the 18th Congressional District, was instituted by the filing and service of a complaint seeking declaratory and injunctive relief and relief in the nature of mandamus, on March 8, 1967. The defendants named therein are the Speaker of the House of Representatives, five other members thereof, and the Clerk, the Sergeant-at-Arms and the Doorkeepers. The Member-defendants are sued individually and as representative of the class of Members, while the non-Member defendants are sued individually and in their respective capacities as agents or employees of the House of Representatives.

The complaint alleged that House Resolution 278 violated Article I, Section 2, Clause 2 of the Constitution of the United States in that it prescribed qualifications for membership in the House of Representatives other than those established therein. The complaint further alleged that the enactment of House Resolution 278, as to all non-

[2] "RESOLVED, That said Adam Clayton Powell, Member-elect from the 18th District of the State of New York be, and the same hereby is excluded from membership in the 90th Congress and that the Speaker shall notify the Governor of the State of New York of the existing vacancy."

white electors of the 18th Congressional District of New York, violated the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. The complaint further alleged that as to the female electors of the 18th Congressional District of New York, the enactment of House Resolution 278 violated the Nineteenth Amendment to the Constitution of the United States.

The complaint further alleged that insofar as Member-Elect Powell is concerned, House Resolution 278 constitutes a bill of attainder and an *ex post facto* law, in violation of Article I, Section 9 of the Constitution and inflicts cruel and unusual punishment, in violation of the Eighth Amendment to the Constitution of the United States. Finally, the complaint further alleged that the hearings before the select committee, as well as House Resolution 278 and the debate thereon, denied Congressman Powell his fundamental rights of due process of law, in violation of the Fifth and Sixth Amendments to the Constitution of the United States.

B. Proceedings below

1) *Proceedings in the District Court*

After the filing and service of the complaint upon respondents, an application for the certification of the necessity of convening a three-judge court pursuant to 28 U.S.C. 2282 and 2284, and a motion for a preliminary injunction came on before the United States District Court for the District of Columbia on April 4, 1967. In addition to opposing Petitioners' application for the certification of the necessity of convening a three-judge court and their motion for interim injunctive relief, respondents moved to dismiss the action for lack of jurisdiction generally on the grounds that:

(a) the District Court did not have jurisdiction over the subject matter of the action;

(b) the District Court did not have jurisdiction over the persons of the respondents; and

(c) the complaint failed to state a cause of action upon which relief could be granted.

On April 7, 1967, the District Court issued an order (i) denying the application for the certification of the necessity of three-judge court; (ii) dismissed the complaint for want of jurisdiction over the subject matter; and (iii) denying the motion for a preliminary injunction. In so doing the Court bottomed its decision on what it considered the doctrine of separation of powers. As it stated:

> "It is the conclusion of this Court that for the Court to decide this case on the merits and to grant any of the relief prayed for in the complaint would constitute a clear violation of the doctrine of separation of powers. For this Court to order any Member of the House of Representatives of the United States, any officer of the House, or any employee of the House to do or not to do an act related to the organization or membership of that House, would be for the Court to crash through a political thicket into political quicksand.
>
> "This Court holds, therefore, that by reason of the doctrine of separation of powers, this Court has no jurisdiction in this matter."

At the same time the District Court entered its order denying the application for a statutory three-judge court and for preliminary injunction and granting the motion to dismiss the complaint for want of jurisdiction of the subject matter. A notice of appeal from the aforesaid order was duly and immediately filed, on April 7, 1967.

2) *Proceedings in the United States Court of Appeals for the District of Columbia Circuit*

On April 9, 1967, Petitioners moved in the Court of Appeals for a summary reversal of the order and judgment of the District Court, a dispensation of the requirement for the filing of briefs and an immediate hearing thereon. On April 10, 1967, the Court of Appeals denied that portion of the motion seeking an immediate hearing thereon.

Subsequently, and on April 27, 1967, Petitioners' motion for summary reversal of the order and judgment of the District Court came before the Court of Appeals, Bazelon, Chief Judge, and Burger and Leventhal, Circuit Judges. Later that day, the Court of Appeals entered an order denying Petitioners' motions for summary reversal and to dispense with the filing of briefs, ordered that the appeal be heard on the original record on appeal in lieu of the filing of a printed joint appendix, directed counsel to establish a mutually agreeable briefing schedule by conferring with the Clerk of the Court and directed the Clerk "to schedule this case for argument on a day as soon after the briefs are filed as the business of the Court will permit."

On May 4, 1967, Petitioners, cognizant that they could not obtain review in this Court before well into the October, 1967, Term by any other procedure than that established by Rule 20 of the Revised Rules of this Court, informed the Court of Appeals that they intended to file an application for a writ of certiorari pursuant thereto. At the same time, Petitioners moved the Court of Appeals to defer any further consideration of their appeal pending the decision of this Court on their application for a writ of certiorari pending judgment below. Thereafter, and on May 5, 1967, Petitioners filed and served a designation of the entire record

in the Court of Appeals. On May 10, 1967, the Court of Appeals recognizing "that novel issues of substantial public importance were tendered which . . . should be resolved at an early date" entered an order providing that the time for filing of briefs in that court be extended pending disposition of this Petition by this Court, that the order of the Court of Appeals would be stayed if this Petition is granted, that except as stated in the order, the appellants' motion to stay proceedings was denied without prejudice to the filing of any motion to advance argument if the briefs are filed in the Court of Appeals, and that either party may seek further relief by appropriate motion for good and sufficient cause shown.

Following the denial by this Court of Petitioners' application for a writ of certiorari pursuant to Rule 20,[3] argument was had in the Court of Appeals. On February 28, 1968, the Court of Appeals affirmed the dismissal of the complaint. Its opinion is appended hereto as Appendix B.

[3] 387 U.S. 933.

REASONS FOR GRANTING THE WRIT

I. The Constitutional Issues Advanced by the Petitioners in This Case Are Serious and Substantial.[4]

1. The action of the majority of the House of Representatives in refusing to allow a duly elected Representative of the people who meets all the constitutional qualifications for membership in the House to take his seat and further barring him from membership in the House for the entire 90th Congress violates the Constitution of the United States.

A. The House of Representatives is required under the Constitution to seat a duly elected Congressman who meets all the qualifications for membership in the House set forth in the Constitution.[5]

(i) *It was the firm intention of the Framers that the legislature was to have no power to alter, add to, vary or ignore the constitutional qualifications for membership in either House.*

The history of the proceedings at the Constitutional Convention of 1787 during which the age, citizenship and inhabitancy qualifications for membership in the House were debated and accepted,[6] and all other qualifications

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[4] Petitioners specifically incorporate by reference herein, their previous petition for certiorari pursuant to Rule 20.

[5] Counsel wish to express their appreciation to Harriet Van Tassel, a member of the New York Bar, for her intensive research work on the materials included in this section.

[6] Article I, §2, Clause 2 reads:

"No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of the State in which he shall be chosen."

whatsoever were rejected, reveals the unmistakable intention of the Enactors that neither branch of the Legislature was to have any power to alter, add to, vary or ignore the constitutional qualifications. Accordingly the power of each House to be the "judge of the . . . qualifications of its own members",[7] was, in the intention of the Framers, restricted solely to these qualifications set forth in the Constitution itself.

The legislative history of both of these critical clauses during the Philadelphia convention makes this crystal clear. As Professor Charles Warren describes the proceedings in his authoritative study of the Constitutional Convention, *The Making of our Constitution,* (1928), the intention of the Founding Fathers, that the Legislature was to have no power to alter, add to or ignore the Constitutional qualifications for membership in either House could not have been clearer.

After agreeing upon the age, citizenship and inhabitancy qualifications, 2 Farrand, *Records of the Federal Convention,* p. 248, *et seq.,* the Convention turned to a proposal of Gouveneur Morris which would "leave the Legislature entirely at large" to set qualifications for membership in each House. 2, Farrand, p. 250. The effect of this proposal, Professor Warren points out, "if adopted, would have been to allow Congress to establish any qualifications which it deemed expedient." *Warren,* at p. 420.

A debate, sweeping in its consequences for the establishment of the fundamental principles of representative democracy in this country, then developed. Mr. Williamson, of

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[7] Article I, Section 5, reads in pertinent part:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . ."

North Carolina, and Mr. Madison, of Virginia, strongly opposed such a proposal. Mr. Williamson argued:

> "This could surely never be admitted. Should a majority of the Legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body." 2 Farrand, *Records of the Federal Convention,* p. 250.

Mr. Madison warned that to permit the Congress to establish such qualifications as it deemed expedient, would be "improper and dangerous". Madison's own summary of his position at the Convention is compelling:[8]

> "Mr. (Madison) was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. . . . It was a power also, which might be made subservient to the views of one faction agst. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partisans of [a weaker] faction."
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> • • •
>
> "Mr. (Madison) observed that the British Parliamt. possessed the power of regulating the qualifications

[8] Farrand, Vol. 2, p. 250.

> both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention.[9] They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties."

The conclusion which flows from this legislative history is inescapable for as Professor Warren points out:

> "The Convention evidently concurred in these views, for it defeated the proposal to give to Congress power to establish qualifications in general by a vote of seven states to four—." Warren, p. 421, Farrand, Vol. 2, p. 250

At the same time the Convention also defeated the proposal for a property qualification. Farrand, Vol. 2, p. 250. And on this same day, August 10, the Convention, without debate or dissent, agreed to that section of the report which provided that: "Each House shall be the judge of the elections, returns and qualifications of its own members." Farrand, Vol. 2, p. 254.

As Professor Warren points out, "the meaning of this provision (which became Article I, § 5 of the Constitution, as finally drafted) is clearly shown" if taken in connection with the legislative actions and debates of August 10th which surrounded its enactment. Warren, *supra,* at p. 420. As Professor Warren summarizes this conclusion:

> "Such action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress, either to the House or to the Senate, the right to establish any qualifications for its mem-

[9] As Professor Warren points out, Madison's reference "was undoubtedly to the famous election case of John Wilkes in England," Warren, *supra,* at p. 420, who had been excluded as a member by the House of Commons on three occasions in 1769. See Postgate, "That Devil Wilkes," New York, 1929.

bers, other than those qualifications established by the Constitution itself, *viz.*, age, citizenship and residence. For certainly it did not intend that a single branch of Congress should possess a power which the Convention had expressly refused to vest in the whole Congress. As the Constitution, as then drafted, expressly set forth the qualifications of age, citizenship, and residence, and as the Convention refused to grant to Congress power to establish qualifications in general, the maxim *expressio unius exclusio alterius* would seem to apply. . . . The elimination of all power in Congress to fix qualifications clearly left the provisions of the Constitution itself as the sole source of qualifications." Warren, *supra,* at p. 421[10]

(ii) *This Court has consistently reaffirmed the conclusion that the House has no constitutional power to refuse to seat a duly elected representative of the people who meets all the qualifications for membership set forth in the Constitution.*

The precise constitutional questions presented by this Petition and the fundamental premises underlying the limitation upon legislative power adopted by the Philadelphia Convention and reflected in the ratifying conventions have been authoritatively discussed by this Court and only recently vigorously reaffirmed.

In *Newberry* v. *United States,* 256 U.S. 232 (1920), the Court had the occasion directly to reaffirm the conclusion of the Philadelphia Convention that the House has no power under the Constitution to vary in any way the quali-

[10] Indeed, the period of ratification of the Constitution reveals that it would not have been adopted if the ratifying conventions had believed that the Constitution gave to the Legislature any power to refuse to seat an elected representative who met the explicit constitutional qualifications for membership. See *Federalist Papers,* Nos. 52, 60.

fications for membership in the House set forth in the Constitution. This discussion occurred in both the majority opinion of the Court and the concurring opinions of Mr. Justices Pitney, Brandeis and Clarke. Significantly, while the majority and concurring Justices disagreed on the main issue of the case—whether a primary election fell within the meaning of the word "Elections" in Article I, Section Four—all the Justices specifically agreed upon the proposition that the legislature had no constitutional power to alter in any way the qualifications for membership in either House expressly set forth in the Constitution.

In Mr. Justice McReynolds' opinion for the Court, 256 U.S. at 243 (joined in by Mr. Justice Holmes, Mr. Justice McKenna, and Mr. Justice Day) the position is squarely taken that the legislature has no power to deviate from or alter the qualifications for membership in either House set forth in the Constitution. Thus the opinion for the Court states, at p. 255:

> "Section Four was bitterly attacked in the State Conventions of 1787-1789, because of its alleged possible use to create preferred classes and finally to destroy the States. In defense, the danger incident to absolute control of elections by the States and the express limitations upon the power, were dwelt upon. Mr. Hamilton asserted: 'The truth is that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of the persons who may choose, or be chosen, as has been remarked upon other occasions are defined and fixed in the Constitution and are unalterable by the Legisla-

ture.' The Federalist, LIX, LI. The history of the times indicates beyond reasonable doubt that, if the Constitution makers had claimed for this section the latitude we are now asked to sanction, it would not have been ratified. See Story on the Const. §§ 814, *et seq.*[11] 256 U.S. at pp. 255-256.

The concurring opinion of Mr. Justice Pitney, joined in by Mr. Justice Brandeis and Mr. Justice Clarke is equally emphatic in reaffirming the conclusions of the Philadelphia Convention that the legislature had no power to add, alter, or vary the constitutional qualifications for membership in either House. Thus the concurring opinion also adopts approvingly the statements and analysis of Hamilton in Number 60 of the Federalist Papers:

> "What was said, in No. 60 of the Federalist, about the authority of the National Government being *restricted* to the regulation of the time, the places, and the manner of elections, was in answer to a criticism that the national power over the subject 'might be employed in such a manner as to promote the election of some favorite class of men in exclusion of others,' as by discriminating 'between the different departments of industry, or between the different kinds of property, or between the different degrees of property'; or by a leaning 'in favor of the landed interest, or the monied interest, or the mercantile interest, or the manufacturing interest'; and it was to support his contention that there was 'no method of securing to the rich the

[11] The opinion of the Court proceeds to make it unmistakably clear which are the constitutional qualifications for membership in the House which are "defined and fixed" and "unalterable by the legislature" in its subsequent comment at page 256, "Who should be eligible for election was also stated. 'No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected, be an inhabitant of that State in which he shall be chosen.'" 256 U.S. at p. 256.

> preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected,' which formed no part of the power to be conferred upon the national government, that Hamilton proceeded to say that its authority would be 'expressly restricted to the regulations of the *times*, the *places*, and the *manner* of elections.' This authority would be as much restricted, in the sense there intended if 'the manner of elections' were construed to include all the processes of election from first to last. The restriction arose from the express qualifications prescribed for members of House and Senate, and for those who were to choose them; subject to which all regulations of preliminary, as well as of final, steps in the election necessarily would have to proceed." 256 U.S. at 283-284.

The unanimous agreement of the Court in *Newberry* as to the constitutional limitations upon the power of the legislature to alter, vary or deviate from the qualifications for membership in the House, set forth in the Constitution itself, was explicitly reaffirmed by this Court in 1940 in *United States* v. *Classic*, 313 U.S. 299, which resolved the precise issue as to whether primary elections were "elections" subject to regulation by Congress within the meaning of Section 4 of Article I, which as the Court pointed out had "not been prejudged" by the prior decision in *Newberry*. *United States* v. *Classic*, 313 U.S. at 317.[12]

In *Classic*, the Court in the opinion of Mr. Justice Stone repeatedly reaffirmed and restated the fundamental premises which grounded the unanimous conclusion of the Court in *Newberry*—that the legislature may not interfere with the free choice of representatives who meet constitutional

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[12] See also 40 Mich. L. Rev. 460 (1941); 36 Ill. L. Rev. 475 (1941); 10 Geo. Wash. L.R. 625 (1941).

qualifications for membership in the House. In words reminiscent of the tone of the statements of the Founders, Mr. Justice Stone reminded the Nation once again:

> "That the free choice by the people of representatives in Congress, *subject only to the restrictions to be found in Sections 2 and 4 of Article I and elsewhere in the Constitution,* was one of the great purposes of our constitutional scheme of government cannot be doubted." 313 U.S. at 316. (Emphasis added.)

As Mr. Justice Stone wrote, ". . . a dominant purpose of Section 2, so far as the selection of representatives in Congress is concerned, was to secure to the people the right to choose representatives . . . to safeguard the right of choice by the people of representatives in Congress secured by Section 2 of Article I", *United States* v. *Classic, supra,* at pp. 318, 320.[13]

The unanimous views of the Justices in *Newberry* concerning the constitutional prohibition upon legislative

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[13] Only recently in *Stassen for President Citizens Committee* v. *Jordon,* 377 U.S. 914, in a case in which the issue raised was unrelated to the constitutional questions presented in this petition, in their dissent from the denial of the petition for writ of certiorari, 377 U.S. at 927, Mr. Justice Douglas, the Chief Justice, and Mr. Justice Goldberg saw fit to restate the powerful words of Mr. Justice Stone in *Classic* that "the free choice by the people of representatives in Congress, subject only to the restrictions to be found in Sections 2 and 4 of Article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of government cannot be doubted" at p. 978. This reference to the statement in the *Classic* majority opinion, by Mr. Justice Douglas who dissented in *Classic,* emphasizes the obvious point that the *Classic* dissenting judges, Mr. Justice Douglas, Mr. Justice Black and Mr. Justice Murphy did not base their dissent from the result of the case upon any disagreement with Mr. Justice Stone's formulation of the fundamental constitutional question which is decisive in the present petition.

power to alter or disregard constitutional qualifications for membership reaffirmed by the discussion in *Classic,* was dispositively treated by the Court in this Term in the landmark decision in *Bond et al.* v. *Floyd et al.,* 385 U.S. 116.

a) The unanimous opinion last Term in *Bond* v. *Floyd, supra,* is the logical extension of the analysis of the Court expressed first in *Newberry,* reaffirmed in *Classic* and now the gravamen of the decision in *Bond.* In understanding the teaching of this Court in *Bond* in respect to the fundamental constitutional proposition at stake in this Petition it is essential to examine first the thoughtful dissenting opinion of Chief Judge Tuttle in the three-judge court which became in a critical way the foundation stone upon which this Court's opinion in *Bond* rests.

In *Bond* this Court does not disagree with Chief Judge Tuttle's direct holding that the Georgia Legislature had no power to refuse to seat Representative-Elect Bond since he met all the stated qualifications set forth in the Georgia Constitution. Rather, the Court would seem to assume the soundness of this proposition (see footnote 13 to the Court's opinion), and proceeds to meet Georgia's second line argument that the State is merely testing one of the constitutional qualifications—the requirement of taking the constitutional oath. This Court's opinion disposes of this contention of the State by its conclusion that the result of the State's asserted power to "look beyond the plain meaning of the oath provisions", in order to determine whether this Representative-Elect "may take the oath with sincerity", 385 U.S. 116, at 130, as applied to the facts of this case, violated the First Amendment to the Federal Constitution, 385 U.S. 116, at 137.

Chief Judge Tuttle met the primary constitutional issue posed in this petition in a forthright manner. In the face of a concession by the State that the Representative-Elect met all the stated qualifications for membership in the House, see 385 U.S. at 129, Chief Judge Tuttle remarked:

> "In the absence of a strong showing of judicial interpretation to the contrary, it would seem that simple justice would require a holding that where specific qualifications are stated for an office and the Legislature is given the power to judge whether an aspirant for the office is 'qualified,' the legislature, as judge, should be required to look to the stated qualifications as the measuring stick. To hold to the contrary and permit the House as judge to go at large in a determination of whether Representative-Elect "A" meets undefined, unknown and even constitutionally questionable standards shocks not only the judicial, but also the lay sense of justice."

Chief Judge Tuttle then explained in a clarifying manner a question which has seemed to confuse many commentators in the past as to why there have been few direct legal precedents exactly on this issue. He pointed out:

> "It can be readily understood why there are few legal precedents to give guidance in such a situation. In the first place, it can be assumed that members of a state or national legislature are prone to recognize the right of the electorate to choose as their representative whom they want to serve them. Thus, there may not be expected to be many clear precedents. Further, it is readily apparent that in those cases in which a legislative body has exceeded its authority the shortness of the term of office may make moot any contest in court." 251 F. Supp. 333, 352.

Because of the understandable paucity of judicial opinions, Chief Judge Tuttle relied heavily upon certain legisla-

tive precedents.[14] However, in addition, he placed great emphasis upon the once-famous, but now rarely remembered, Report of the Association of the Bar of the City of New York in 1920 under the Chairmanship of Charles Evans Hughes, later Chief Justice of this Court, including such distinguished representatives of the American bar as Joseph M. Proskauer, Ogden L. Mills, Morgan J. O'Brien and Louis Marshall. The Committee was appointed at the time of the expulsion of five members of the Socialist Party from the New York State Assembly. Its mandate from the Bar Association was to "appear before the Assembly or its Judiciary Committee and take such action as is required to safeguard and protect the principles of representative government guaranteed by the Constitution which are involved in the proceedings now pending."

The Committee filed a brief because as they said they regarded "these proceedings as inimical to our institutions, because they tend to subvert the very foundation upon which they rest—representative government."

Chief Judge Tuttle singled out for consideration the conclusion of this eminent committee of American lawyers concerning the critical constitutional question as to the power of a legislature to exclude a duly elected member for grounds other than expressly stated in the Constitution.[15]

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[14] E.g., see Contested Election Cases of *William McCreery*, 1 Hinds §381 et seq.; *Benjamin Stark*, 1 Hinds §433; *Grafton* v. *Conner*, 1 Cong. Globe, Part 3, 41st Cong., 2d Session, 1869-70, pp. 2322-23; and *William Langer*, S. Jour. 77th Cong., 1st Session, p. 8, *et seq.*, 2d Session, p. 3, *et seq.*

[15] Although the Committee made it plain in its reports that the New York Assembly action was an action for *expulsion* rather than one to determine the qualifications of its members, it felt that it was critical, because of legislative and public confusion on this point, to state its views on the power of a legislature to judge the "qualifications" of elected members.

The Committee stated in its Brief its measured opinion as to this fundamental issue:

> "We contend that the opinion expressed by Senator Knox in the case of Senator Smoot, supra, correctly defines what is meant by qualification. The constitution expressly specifies a number of disqualifications. . . . The principle of constitutional interpretation applicable to this phase of the subject was elaborated in classic phrase by Chancellor Sanford in Barker v. People, 3 Cowen, 703, which, although decided in 1824, and therefore involving the interpretation of an earlier Constitution, is nevertheless as applicable in principle to the present Constitution: 'Eligibility to public trust, is claimed as a constitutional right, which cannot be abridged or impaired. The Constitution established and defines the right of suffrage; and gives to the electors and to their various authorities, the power to confer public trust. . . . *Excepting particular exclusions thus established, the electors and the appointing authorities are, by the Constitution, wholly free to confer public stations upon any person, according to their pleasure. The Constitution* giving the right of election and the right of appointment; these rights consisting . . . essentially in the freedom of choice; and the Constitution also declaring that certain persons are not eligible to office; it follows from these powers and provisions, that all other persons are eligible. Eligibility to office is not declared as a right or principle, by any expressed terms of the Constitution; but it results, as a just deduction, from the expressed powers and provisions of the system. The basis of the principle, is the *absolute liberty* of electors and the appointing authorities, *to choose* and to appoint *any person, who is not made ineligible by the Constitution.* . . . I, therefore, conceive it to be entirely clear that the Legislature cannot establish arbitrary exclusions from office or any general regulation requiring qualifications,

which the Constitution has not required' . . . . " (Emphasis supplied by Chief Judge Tuttle.)

Brief of Special Committee appointed by the Association of the Bar of the City of New York, January 20, 1920.

Based upon all of these considerations, Chief Judge Tuttle concluded as a matter of law that "it is clear that Bond was found disqualified on account of conduct not enumerated in the Georgia Constitution as a basis of disqualification. This was beyond the power of the House of Representatives" 251 F. Supp. 333, at 357.

(b) As we have pointed out above, this Court does not appear to disagree with Chief Judge Tuttle's conclusion on the basic constitutional question here involved. Quite to the contrary, in the course of its refutation of Georgia's secondary line of defense that all it was doing was *testing* a constitutional qualification—the necessity of an oath supporting the Constitution—the Court saw fit to set forth in full the fundamental policy reasons we have discussed previously which led the Framers to conclude that the qualifications of members of either House are "defined and fixed by the Constitution" and "are unalterable by the legislature." [16]

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[16] Fn. 13 of the opinion summarizes these conclusions of the Framers:

"Madison and Hamilton anticipated the oppressive effect on freedom of expression which would result if the legislature could utilize its power of judging qualifications to pass judgment on a legislator's political views. At the Constitutional Convention of 1787, Madison opposed a proposal to give to Congress power to establish qualifications in general. Warren, *The Making of the Constitution* (1938), 420-422. The Journal of the Federal Convention of 1787 states:

The entire structure of the unanimous Bond opinion in this Court confirms the impression that the Court is in accord with the conclusions of the Framers that the qualifications of representatives of the people were defined and fixed by the Constitution and are unalterable by the Legislature. The Court points out that as to "the only stated qualifications for membership in the Georgia legislature—the State concedes that Bond meets them all" 385 U.S. at 129. In this Court, Georgia did not argue at any length, and if it did, this Court did not think the argument even worthy of extended response, that a legislature has unbounded discretion to set new standards and qualifications for membership.[17] Instead the entire Bond opinion is predicated upon the assumption by both the Court and the State that the Legislature is, indeed, bound by the stated con-

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"'Mr. Madison was opposed to the Section as vesting an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Government and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution * * * Qualifications founded on artificial distinction may be devised, by the stronger in order to keep out partisans of a weaker faction.

* * * * *

"'Mr. Madison observed that the British Parliament possessed the power of regulating the qualifications both of the electors, and the elected: and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.' 2 Farrand, *The Records in the Federal Convention of 1787* (Aug. 10, 1787), pp. 249-250.

"Hamilton agreed with Madison that:

"'The qualifications of the persons who may choose or be chosen * * * are defined and fixed by the constitution: and are unalterable by the legislature.' The Federalist, No. 60 (Cooke ed. 1961), 409."

[17] Cf. the contentions of the respondents below in their brief, at page 34.

stitutional qualifications. As we have noted, the State's primary line of defense was that it had a right to test the sincerity of the meeting of a constitutional qualification—the taking of an oath in support of the Constitution. The Court rejected this defense by pointing out that disqualification even "under color of a proper standard" is reviewable and beyond the power of the House if it violates other constitutional prohibitions—in this case the First Amendment.

Unlike the respondents in this case, Georgia did not "claim that it should be completely free of judicial review", 385 U.S. at 130. It sought to convince this Court that its action of exclusion was based upon the testing of a *proper* constitutional qualification—the necessity of taking an oath. Both the Court and the State therefore implicitly adopted Chief Judge Tuttle's incisive analysis of the fundamental constitutional issue presented in this Petition. The entire posture of the *Bond* case in this Court would tend to confirm the observation of the Chief Judge of the Fifth Circuit that the argument that a Legislature may disregard, enlarge upon, or alter the express constitutional qualifications for a duly elected member of the Legislature "shocks not only the judicial, but also the lay sense of justice." *Bond* v. *Floyd*, 251 F.Supp. 333 at page 352.

B. The punishment of exclusion from membership in the House for the 90th Congress inflicted upon the Petitioner violates Article One, Section 9, Clause 3, providing that "No Bill of Attainder or *ex post facto* law shall be passed."

H. Res. 278, which imposes the severe punishment of exclusion from the House of a duly elected Representative who meets all constitutional qualifications for membership, is a classic Bill of Attainder prohibited by Article One,

Section 9, Clause 3 of the Constitution. It is "a legislative act which inflicts punishment without a judicial trial. *Cummings* v. *Missouri*, 4 Wall 277; *United States* v. *Lovett*, 328 U.S. 303 (1946); *United States* v. *Brown*, 381 U.S. 437 (1965). It represents, in the recent words of the Chief Justice, "the evil the framers had sought to bar; legislative punishment, of any form or severity, of specifically designated persons or groups." *United States* v. *Brown*, *supra*, at p. 447.

The truly extraordinary nature of the proceedings against Petitioner Powell was that the entire House, its Select Committee, its leadership and the majority which took control at the conclusion of the debates[17a] openly and frankly regarded the proceedings as a means of imposing "legislative punishment—against specifically designated persons." *United States* v. *Brown*, *supra*, at 447. The only controversy between the majority and the minority was as to the "form or severity" of the "legislative punishment." *Ibid.* at 447. The resolution of exclusion was therefore a classic Bill of Attainder prohibited by the Constitution. *Cummings* v. *Missouri*, 4 Wall. 277; *Ex parte Garland*, 4 Wall. 333; *United States* v. *Lovett*, *supra*; *United States* v. *Brown*, *supra*.

C. The punishment of exclusion from Membership in the House inflicted upon the Petitioner violated the due process guarantee of the Fifth Amendment.

The action of the House in excluding the Congressman-Elect for the avowed purpose of punishing him for four alleged findings of misconduct, was in violation of the due process guarantee of the Fifth Amendment to the Constitution of the United States. It was not an action "based

[17a] See Cong. Rec., Mar. 1, 1967, 1919, *et seq.*

upon reasonable consideration of pertinent matters of fact according to established principles of law" *Newberry* v. *United States,* 256 U.S. at 285. It was "an arbitrary edict of exclusion." *Newberry* v. *United States, supra,* at p. 285.

In the famous concurring opinion of Mr. Justices Pitney, Brandeis and Clarke, in *Newberry* v. *United States, supra,* at p. 285, adopted approvingly by the Court in *United States* v. *Classic,* 313 U.S. 299, this is made amply clear:

> "The power to judge of the elections and qualifications of its members, inhering in each House by virtue of Sect. 5 of Art. I, is an important power, essential to our system to the proper organization of an elective body of representatives. But it is a power to *judge,* to determine upon reasonable consideration of pertinent matters of fact according to established principles and rules of law; not to pass on arbitrary act of exclusion" at p. 285.

The extraordinary nature of the proceedings in the House[18] which resulted in findings of fact upon which the House admittedly took *punitive* action against the Member-Elect was that when the Member-Elect moved for certain elementary rights of due process of law at the outset of the hearings of the Select Committee, these were denied.

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[18] Until this unusual proceeding the House itself has always afforded a Member due process of law when possible punishment is involved. For example in the First Congress, during the contested election case of *Ramsay* v. *Smith,* 1 Hinds 717, the reports state: "Mr. Smith be permitted to be present from time to time when proofs are taken, to examine the witnesses and to offer counter-proofs—", 1 Hinds 717. See for example Statement of Congressman Robeson in the 47th Congress (1882) in discussing procedures to be followed in an exclusion case: "We are a court, then, of high equity, proceeding according to legal processes to investigate truths, the conditions of which are defined and fixed by constitutional law." *Cf.* also the full procedural guarantees afforded in every respect to the Mississippi Members challenged in the *Mississippi Contested Elections of 1965.*

The Member-Elect had requested these rights including, but not limited to, the following:

> "(1) Fair notice as to the charges now pending against him, including a statement of charges and a bill of particulars by any accuser;
>
> (2) the right to confront his accusers and in particular to attend in person and by counsel, all sessions of this Committee at which testimony or evidence is taken and to participate therein with full rights of cross-examination;
>
> (3) the right to an open and public hearing;
>
> (4) the right to have this Committee issue its process to summon witnesses whom he may use in his defense;
>
> (5) the right to a transcript of every hearing."

The principal requests of the petitioner for the elementary rights of due process of law required when adjudication will result in punishment, see *Greene* v. *McElroy*, 360 U.S. 474, were denied by the Committee upon the rather astounding ground that "This is not an adversary hearing." Hearings of Select Committee, *supra*, at p. 59. To make it amply clear why these elementary procedural rights of notice, statement of charges, confrontation and cross-examination were being denied, the Chairman concluded his ruling by stating: "Again the Committee states that this is an inquiry and not an adversary proceeding." Hearings of Select Committee, *supra*, at p. 59.[19]

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[19] It should be noted that in its final report Honorable John Conyers, Jr., Member from Michigan and a member of the Select Committee, dissented from this ruling, stating, in part:

> "A. Any Member or Member-elect and his counsel should be afforded the right to cross-examine all witnesses brought before this committee or any other committee inquiring into the qualifications, *punishment*, final right of a Member to be seated, or other related questions." (Emphasis added.)

Report of Select Committee, *supra*, at p. 35.

The truly extraordinary nature of these rulings denying the petitioner the most elementary rights of due process of law, based on the theory that the proceeding which ultimately resulted in punishment was not "adversary" in nature but merely an "inquiry", is underscored by the procedures followed contemporaneously by the other House in the hearings involving Senator Thomas Dodd. At the outset of the Dodd hearings the Chairman stated:

> "Senator Dodd will have all his rights protected at this hearing. He may attend the hearings and may testify if he wishes. He may be accompanied by counsel of his own choosing. He or his counsel will be permitted to cross-examine witnesses and offer evidence in his own behalf." [20]

D. The Exclusion of the Petitioner violated his rights and the rights of the overwhelming Negro majority of the citizens of the 18th Congressional District guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution.

The uncontested circumstances surrounding the refusal of the majority of the House to seat the Petitioner, the duly elected and constitutionally qualified choice of the people of the 18th Congressional District of New York, as their representative reveals a serious question as to whether the Petitioner's rights as a Negro citizen, and the rights of the approximately 400,000 Negro citizens residing in the 18th Congressional District of New York to the freedom and equality guaranteed to them by the Wartime Amendments have been violated.

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[20] In this connection, see *Report of the National Advisory Commission on Civil Disorders.* New York: Bantam Books (1968).

II. The dismissal of the complaint by the District Court for want of jurisdiction of the subject matter totally disregards the most historic opinions of this Court and unless speedily reversed will seriously undermine the constitutional role of the Federal Judiciary as the ultimate guardian of the "very essence of civil liberty." *Marbury* v. *Madison*.

A. The dismissal of the complaint for "want of jurisdiction of the subject matter" is in violation of Article III of the Constitution and the most authoritative decisions of this Court.

Once again, as in *Baker* v. *Carr*, 369 U.S. 186, the District Court's "opinion reveals that the court rested its dismissal upon lack of subject-matter jurisdiction and lack of a justiciable cause of action without attempting to distinguish between these grounds." *Baker* v. *Carr*, at p. 196. As in *Baker* v. *Carr*, the District Court below "was uncertain as to whether our cases withholding judicial relief rested upon a lack of federal jurisdiction or upon the inappropriateness of the subject-matter for judicial consideration—what we have designated 'non-justiciability.'" *Baker* v. *Carr*, at p. 198. As in *Baker* v. *Carr*, here also *"the distinction between the two grounds is significant," supra*, at p. 198 (emphasis added).

As this Court pointed out in *Baker*, "in the instance of non-justiciability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry *necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be molded.* In the instance of lack of jurisdiction the cause either does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art. III, Sect. 2),

or is not a 'case or controversy' within the meaning of that section; or the cause is not described in the jurisdictional statute" *Baker,* at p. 198 (emphasis added).

Nothing could be plainer than that the matter in this complaint arises under the Constitution of the United States and that the conclusion of the District Court that the complaint must be dismissed "for want of jurisdiction over the subject-matter" [Appendix A to this Petition] requires immediate reversal.

As this Court reminded the District Court in *Baker,* "Article III of the Federal Constitution provides that 'The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority. . . .'" And, as in *Baker,* it is obviously "clear that the cause is one which 'arises under' the Federal Constitution," *supra,* at 199. For, as in *Baker,* "dismissal of the complaint upon the ground of lack of jurisdiction of the subject-matter would, therefore, be justified only if that claim were 'so attenuated and unsubstantial as to be absolutely devoid of merit' *Newburyport Water Co.* v. *Newburyport,* 193 U.S. 561, 579, or 'frivolous', *Bell* v. *Hood,* 327 U.S. 678, 683." That the claim is insubstantial must be 'very plain'. *Hatt* v. *Keith Vaudeville Exchange,* 262 U.S. 271, 274" *Baker,* at p. 199.

B. The subject-matter of this suit was justiciable and the opinion of the District Court dangerously undermines the historic constitutional role of the Federal Judiciary as the guardian of the civil and political liberties of the people.

The extraordinary confusion in the District Court in holding that the complaint is "dismissed for want of jurisdiction of the subject-matter" resulted in precisely the

"significant" consequences prophesied in *Baker*. Since the district court confused "justiciability" with federal subject-matter jurisdiction, it never proceeded to "the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." *Baker, supra,* at p. 198.

In the setting of this case this failure of the District Court had the most serious juridical and national consequences. By failing to decide these questions, it could not possibly resolve properly fundamental issues of justiciability, *Baker* v. *Carr, supra;* leaving unresolved questions of "transcendent constitutional importance," Respondents' Memorandum, *supra,* p. 3, the speedy resolution of which is required in the interest not only of the parties here involved, but the Nation itself.

(i) *The claim that the refusal of the majority of the House to seat a duly elected Representative of the people who meets all constitutional qualifications for membership in the House violated the Constitution, is clearly justiciable.*

In the words of Mr. Justice Brennan for the Court in *Baker* v. *Carr,* quoting from *Nixon* v. *Herndon,* 273 U.S. 536, 540, the conclusion of the District Court that this concededly grave contention is non-justiciable "is little more than a play on words." *Baker, supra,* at p. 209. As the Court points out, "of course the mere fact that the suit seeks protection of a political right does not mean that it presents a political question." *Baker,* at p. 209. The Court then proceeded to what is the heart of the analysis of the so-called "political question doctrine":

> "Much confusion results from the capacity of the 'political question' label to obscure the need for a case-by-case inquiry. *Deciding whether a matter has in any*

measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is in itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution," at p. 211 (emphasis added).

This is the very essence of the error of the District Court. In order to decide whether "a matter has been in any measure committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed," *Baker, supra,* at p. 211, is "itself a delicate exercise in constitutional interpretation." But this is precisely what the District Court refused to do and what this Court is now called upon to do as the "ultimate interpreter of the Constitution." *Baker, supra,* at p. 211.

The District Court refused to engage in the judicial role it must assume. It declined to meet its responsibility under Article III, the "delicate exercise in constitutional interpretation" which can alone answer the question as to whether this case presents a traditional non-justiciable issue—as to whether the matter is one in "the performance of which entire confidence is placed by our Constitution," *Marbury* v. *Madison, supra,* at 162, in the Legislature.

(ii) *The remaining constitutional questions are uncontestably justiciable and Respondents do not seriously question the appropriateness of judicial consideration of these contentions.*

No serious contention can be made that the remaining constitutional issues[21] presented in the case are non-

[21] The legislative action violates (1) the Bill of Attainder Clause, (2) the Due Process Guarantee of the Fifth Amendment, and (3) the Wartime Amendments.

justiciable. Both the District Court and the Respondents prefer to handle this dilemma by ignoring the claims. This is understandable since these questions are traditionally the subjects for judicial review.

C. This Court has ample power to grant whatever relief is required to remedy the violations of Petitioners' constitutional rights.

(i) The relief requested by Petitioners are the normal judicial remedies traditionally designed to "protect the constitutional rights of individuals for legislative destruction" *Wesberry* v. *Sanders*, 376 U.S. 1. They include conventional requests for injunctive and declaratory relief against the enforcement of unconstitutional action of a legislature, the resolution permanently barring Mr. Powell from membership in the entire 90th Congress. See *Ex parte Young*, 209 U.S. 123; *Dombrowski* v. *Pfister*, 380 U.S. 479; Cf. *Marbury* v. *Madison*, *supra*.

(ii) In addition, Petitioners seek the issuance of a writ of mandamus directed to the Speaker of the House ordering that officer to swear in the Petitioner as the Representative from the 18th Congressional District of New York. For some reason this request has created the greatest degree of consternation among the Respondents. But this is no novel issue of law. The availability of a writ of mandamus under these circumstances was settled in 1803 in *Marbury* v. *Madison*. In *Marbury*, petitioners sought a writ of mandamus against an exalted officer of the Executive Branch, the Secretary of State. Then, as now, the Respondents urged that in some way, the issuance of such a writ would be to "intrude into . . . the prerogatives . . . " of another Branch. *Marbury* v. *Madison*, *supra*, at p. 168. The answer of Chief Justice Marshall to this fear established principles of law which guide us to this day. In words

most appropriate to the present Petition, the Chief Justice wrote:

> "If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone, exempts him from being sued in the ordinary mode of proceedings, and being compelled to obey the judgment of the law. How then can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?
>
> *Marbury* v. *Madison,* at p. 170.

It would be demeaning to the House of Representatives of this great nation to suggest that it would not adhere to the time-honored words of this Court that "the government of the United States has been emphatically termed a government of laws and not of men." *Marbury* v. *Madison, supra,* at p. 162. Like *Marbury,* this is a "delicate case" (at p. 168). And as in *Marbury,* we are confident that the House is deeply committed, as indeed are all Americans, to the proposition that "it is emphatically the province and duty of the judicial court to say what the law is." *Marbury* at p. 175. This case then calls in question "the very essence of civil liberty [which] consists in the right of every individual to claim the protection of the laws, whenever he receives an injury".[22] *Marbury* at p. 163.

(iii) The refusal of the District Court to certify the necessity for a three-judge statutory court was clearly

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[22] The comment of the Chief Justice in *Marbury* is interesting in this respect:

> "In Great Britain the King himself is sued in the respectful form of petition and he never fails to comply with the judgment of his court." *Marbury* at p. 163.

erroneous. The issues raised are conceded by all to be of "fundamental constitutional significance." Respondents' Memorandum, *supra*. The Court of Appeals itself is of the view that "novel issues of substantial public importance" are involved. Federal subject matter jurisdiction was clearly present. See Point II, *supra*. Since the enjoining of congressional action was requested, 28 U.S.C. 2282 required the certification of a three-judge court. *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713; *Schneider* v. *Rusk*, 372 U.S. 224; *Reed Enterprises* v. *Corcoran*, 354 F. 2d 519 (App. D.C.); *Stamler* v. *Willis*, 371 F. 2d 413 (C.A. 7, rehearing denied *en banc*, Feb. 13, 1967).

If this statutory duty of the District Court had been met, a prompt hearing on the constitutional issues as well as issue of justiciability raised by the Respondents would have already occurred, see *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713 and *Stamler* v. *Willis*, 371 F. 2d 413. Direct appeal to this Court by either party, allowed by the statute, of the "novel issues of substantial public importance" would have permitted the early resolution of these issues, admitted by all as essential to the public interest and the statement of Respondents in their Memorandum to the Court of Appeals. Accordingly, if this Court believes that a three-judge statutory court should have been convened, we respectfully suggest that the Court of Appeals be directed to order the District Court to certify the necessity for such a court, that such a court be forthwith convened, and that this Court direct the statutory district court to issue forthwith the relief prayed for herein.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day served a copy of the foregoing brief upon the party of record in this proceeding by delivering three copies thereof properly addressed to the attorney of record.

.....

WILLIAM M. KUNSTLER

New York, N. Y.
May 28, 1968.

APPENDIX A

Opinion of District Court

Plaintiffs assert that Powell meets the qualifications of age, citizenship, and inhabitancy specified in Article I, Section 2, Clause 2 of the Constitution (and holds a valid certificate of election) and that under Article I, Section 5, Clause 1, these are the exclusive tests for admission to House membership. In addition, plaintiffs allege that House Resolution 278 subjects them to discrimination based upon race and color in violation of the 13th and 15th Amendments to the Constitution; that the Resolution constitutes a bill of attainder, an ex post facto law, and cruel and unusual punishment; and that adoption of the Resolution violated procedural due process and the 5th Amendment.

APPENDICES

Application for a Three-Judge Court

28 U.S.C. § 2282 provides as follows:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

It is plain by its terms that the foregoing section applies to an "Act of Congress" only. The history of the statute is wholly consistent with this interpretation. The matter complained of here, House Resolution 278, is patently not an Act of Congress. It follows, therefore, that convening a statutory three-judge court to consider the issues raised by the complaint is neither required nor authorized.

Certificate of Service

I hereby certify that I have this day served a copy of the foregoing brief upon each party of record in this proceeding by delivering three copies thereof properly addressed to the attorney of record.

WILLIAM M. KUNSTLER

New York, N. Y.
May 28, 1968.

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Application for a Three-Judge Court

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The question whether a joint resolution of Congress, approved by the President, would be an "Act of Congress" within the meaning of 28 U.S.C. § 2282 is not before this Court and, therefore, is not decided. In any event, the decision of the Court on the motion to dismiss would moot the question of the right of plaintiffs to a three-judge court in the case at bar.

MOTION TO DISMISS—JURISDICTON

The defendants have moved under Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the complaint for the following reasons:

1. This Court does not have jurisdiction over the subject matter of this action;

2. This Court does not have jurisdiction over the persons of the defendants;

3. The complaint fails to state a claim upon which relief may be granted.

In their brief the defendants have broken down the three contentions for dismissal set forth above into a number of sub-heads. Each of these sub-heads has been briefed and argued with learning and care by both sides.

1. *Speech or Debate Clause*

In the English Bill of Rights ("An Act Declaring the Rights and Liberties of the Subject, and Settling the Succession of the Crown; passed in the 1st year of William and Mary, A.D. 1689") it was provided:

> "That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any *court* or place out of Parliament." [Emphasis added]

This provision was carried forward in our Constitution, Article I, Section 6, Clause 1, in the following language:

> ". . . ; and for any speech or debate in either House, they [The Senators and Representatives] shall not be questioned in *any other place.*" [Emphasis added]

The above provision of the Constitution may well bar jurisdiction of the Court in the matter here in controversy, but the Court does not bottom its decision on this point.

2. *Right of the House of Representatives to Determine the Qualifications of Its Own Members*

The question of whether there is an absolute right in the House of Representatives to determine the qualifications of its own members will not be touched on herein.

Let us consider whether the House has correctly interpreted the word "qualifications" in Article I, Section 5, Clause 1 of the Constitution which provides:

> "Each House shall be the judge of the elections, returns, and *qualifications* of its own members, and a majority of each shall constitute a quorum to do business. . . ." [Emphasis added]

It can be argued with great force and conviction that the word "qualifications" covers any cause that the Members of the House, by majority vote, choose it to cover, including:

1. Contempt of the Courts of New York;

2. Improper maintenance of an employee on a Member's clerk-hire payroll;

3. As a Member and committee chairman, permitting and participating in improper expenditure of government funds for private purposes; and

4. Acting in a manner contemptuous of the House and unworthy of a Member of the House of Representatives.

On the other hand, it can be argued with force and conviction that in light of Article I, Section 5, Clause 2 of our Constitution, which reads:

> "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

the word "qualifications" in Article I, Section 5, Clause 1 is limited to age, length of citizenship, and inhabitancy in the state from which a person shall be chosen, as provided in Article I, Section 2, Clause 2, plus a valid election certificate.

The Court deems it unnecessary to resolve this question in view of its disposition of the matter of jurisdiction under the doctrine of separation of powers.

3. *Separation of Powers*

In this Court's view of the case, the complaint and the relief prayed for raise one issue of such transcendent importance that all other issues in the case pale into insignificance. This issue constitutes a "political question." The question facing the Court may be simply stated as follows: Would consideration of the complaint on the merits and granting any of the requested relief violate the doctrine of "separation of powers"?

At first blush it might be thought that the Supreme Court answered this question in the negative in *Bond* v. *Floyd*, 385 U.S. 116 (1966). In that case the Supreme Court invalidated a resolution of one branch of the Georgia Legislature refusing to seat Bond, holding that the resolution

violated Bond's right to freedom of speech guaranteed by the First Amendment of the federal Constitution. The *Bond* case did not present a "political question" nor did it raise the question of separation of powers between coordinate branches of government.

The Supreme Court stated concisely when a "political question," which includes the doctrine of separation of powers, arises, and when it does not arise, in the case of *Baker* v. *Carr*, 369 U.S. 186, 210 (1962), when the Court said:

> "[I]n the . . . 'political question' cases, it is the relationship between the judiciary and the coordi-
> the federal judiciary's relationship to the States, which gives rise to the 'political question.'
> nate branches of the Federal Government, and not
>
> ". . . The non-justiciability of a political question is primarily a function of the separation of powers." 369 U.S. at 210.

As to the precise issue which I deem to be raised here, there are no cases directly in point. This Court has not found a case nor has any been cited to it where the complaint and the relief prayed therein have posed to the Court with such stark clarity the question of separation of powers between the Legislature, as represented by the House of Representatives of the United States, and the Federal Judiciary. The following cases may be said to touch on the point but each of them is easily distinguishable on its facts:

> *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803);
> *Luther* v. *Borden*, 48 U.S. (7 Howard) 1 (1849);
> *Mississippi* v. *Johnson*, 71 U.S. (4 Wall.) 475 (1867);

Kilbourn v. *Thompson*, 103 U.S. 168 (1880);
United States v. *Ballin*, 144 U.S. 1 (1892);
In re Chapman, 166 U.S. 661 (1897);
Massachusetts v. *Mellon*, 262 U.S. 447 (1923);
Springer v. *Philippine Islands*, 277 U.S. 189 (1928);
Barry v. *United States ex rel. Cunningham*, 279 U.S. 597 (1929);
Bell v. *Hood*, 327 U.S. 678 (1946);
Colegrove v. *Green*, 328 U.S. 549 (1946);
Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U.S. 579 (195);
United States v. *Johnson*, 383 U.S. 169 (1966);
Hearst v. *Black*, 66 App.D.C. 313, 87 F.2d 68 (1936);
Sevilla v. *Elizalde*, 72 App.D.C. 108, 112 F.2d 29 (1940);
Pauling v. *Eastland*, 109 U.S.App.D.C. 342, 288 F.2d 126, *cert. denied*, 364 U.S. 900 (1960);
Reif v. *Barrett*, 355 Ill. 104, 188 N.E. 889 (1933);
Peabody v. *Boston*, 115 Mass. 383 (1874);
People ex rel. Drake v. *Mahaney*, 13 Mich. 481 (1865);
State ex rel. Boulware v. *Porter*, 55 Mont. 471, 178 P. 832 (1919);
Brown v. *Lamprey*, 106 N.H. 121, 206 A.2d 493 (1965).

Let us review briefly, and with a broad brush, the emergence of the doctrine of separation of powers as a principle of free government and the extent to which the doctrine had developed at the time our forefathers prepared the Constitution in 1787 for adoption by the people.

When the doctrine began to bud in ancient Greece, separation of powers referred to the division of authority between the high and the low; between the king, the aris-

tocracy, and the masses; and between the executive and the legislature. To Solon (638?-559 B.C.), the doctrine meant increasing the power of the poor while balancing this power with aristocratic councils and magistrates. Thucydides (471?-400? B.C.) praised a fusion government of the high and the low. Plato (427?-347 B.C.) saw the need for wise aristocrats or kings, and the Statesmen.

Aristotle (384-322 B.C.) contributed the first statement of the doctrine as we now conceive it. He described government as divided into three parts—deliberators, magistrates, and judicial functionaries.

Polybius (205?-125? B.C.) said the Roman Republic was at its best when it combined democratic, aristocratic, and royal elements. Cicero (106-43 B.C.) and Machiavelli (1469-1527) praised government in which all the elements were combined.

John Locke (1632-1704), in order to prevent tyranny, would divide the government between two organs, the executive and the legislative.

Montesquieu (1689-1755) stated the doctrine as it was conceived in the early 18th century as follows:

> "The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.
>
> "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> "Again, there is no liberty, if the judiciary power be not separated from the legislative and executive.

> Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
>
> "There would be an end of everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals." Montesquieu, *The Spirit of the Laws*, 154 (6th Ed. 1792).

However, Montesquieu thought the judiciary of little importance and said at p. 157, *supra*:

> "Of the three powers above-mentioned, the judiciary is in some measure next to nothing: there remains therefore only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility, is extremely proper for this purpose."

It remained for Blackstone (1723-1780) to express the doctrine as it reached full development with the addition of a strong, independent judiciary into the threefold shield of freedom, a government separated into three parts, the legislative, the executive and the judiciary:

> "It is probable, and almost certain, that in very early times, before our Constitution arrived at its full perfection, our kings, in person, often heard and determined causes between party and party. But at present, by the long and uniform usage of many ages, our kings have delegated their whole judicial power to the judges of their several courts; which are the grand depositaries of the fundamental laws of the kingdom, and have gained a known and stated jurisdiction, regulated by certain and established rules, which the crown itself can not now alter but by act

of Parliament. And, in order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute 13 W. III., c.2, that their commissions shall be made (not, as formerly, *durante bene placito*, but) *quamdieu bene se gesserint*, and their salaries ascertained and established, but that it may be lawful to remove them on the address of both houses of Parliament. And now, by the noble improvements of that law in the statute of 1 Geo. III., c.23, enacted at the earnest recommendation of the king himself from the throne, the judges are continued in their offices during their good behavior, notwithstanding any demise of the crown (which was formerly held immediately to vacate their seats), and their full salaries are absolutely secured to them during the continuance of their commissions; his majesty having been pleased to declare that 'he looked upon the independence and uprightness of the judges as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honor of the crown.'

* * *

"In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the crown, consists one main preservative of the public liberty; which can not subsist long in any state, unless the administration of common justice be in some degree separated from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of

> law; which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative. For which reasons, by the statute of 16 Car I., c. 10, which abolished the Court of Star Chamber, effectual care is taken to remove all judicial power out of the hands of the king's privy council, who, as then was evident from recent instances, might soon be inclined to pronounce that for law which was most agreeable to the prince or his officers. Nothing, therefore, is more to be avoided, in a free constitution, than uniting the provinces of a judge and a minister of state." 1 Blackstone, *Commentaries on the Laws of England*, 267-68, 269 (21st Amer. Ed. 1854).

By the time the members of the Constitutional Convention met in 1787 the doctrine of separation of powers between the legislative, the executive, and the judiciary had become an axiom of free government.

In the Federalist papers, which appeared in 1787 and 1788 in defense of the proposed federal Constitution, Madison was assigned the task of explaining the principle of separation of powers and proving that the framers had not disregarded it. Madison did not argue that the principle was a good one. He started with the premise that it was good and that it was a necessary doctrine to be included in the Constitution to insure a republic that guaranteed freedom to its people; this premise was accepted by the people to whom his arguments were addressed.

In The Federalist, No. 47, published January 30, 1788, Madison said:

> "One of the principal objections inculcated by the more respectable adversaries to the constitution, is its supposed violation of the political maxim, that

the legislative, executive and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner, as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

"No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers, legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny. Were the federal constitution therefore really chargeable with the accumulation of powers or with a mixture of powers having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies, has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense, in which the preservation of liberty requires, that the three great departments of power should be separate and distinct." *The Federalist*, No. 47, 323 (Cooke Ed. 1961) (Madison).

James Wilson, who was influential in obtaining the adoption of the Constitution, said:

"Though the foregoing great powers—legislative, executive, and judicial—are all necessary to a

> good government; yet it is of the last importance, that each of them be preserved distinct, and unmingled, in the exercise of its separate powers, with either of with both of the others. Here every degree of confusion in the plan will produce a corresponding degree of interference, opposition, combination, or perplexity in its execution." Wilson, *Works*, 407 (1804).

The doctrine of separation of powers, which developed over a period of two millennia, is firmly imbedded in the warp and woof of our Constitution.

It is the conclusion of this Court that for the Court to decide this case on the merits and to grant any of the relief prayed for in the complaint would constitute a clear violation of the doctrine of separation of powers. For this Court to order any member of the House of Representatives of the United States, any officer of the House, or any employee of the House to do or not to do an act related to the organization or membership of that House would be for the Court to crash through a political thicket into political quicksand.

This Court holds, therefore, that by reason of the doctrine of separation of powers, this Court has no jurisdiction in this matter.

The Court rules as follows:

1. The application for a three-judge Court is denied.

2. The complaint is dismissed for want of jurisdiction of the subject matter in this Court.

3. The prayer for a preliminary injunction falls with the dismissal of the complaint.

George L. Hart, Jr.
GEORGE L. HART, JR.,
Judge.

Date: April 7, 1967.